

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6490 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARSHADKUMAR B SARAIYA

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioner

MR VC DESAI for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. In view of the subsequent developments which have taken place, on which there is no dispute between the parties, I do not consider it necessary to give out the detailed facts of the case.

3. The facts, in brief, which are necessary for

disposal of this special civil application are as under:

The petitioner by this special civil application is challenging the order of the Government dated 20th February, 1993 which has been passed on revision filed by the respondent No.3, herein, against the order of Collector, Mehsana dated March, 1992.

4. The dispute pertains to the application of the petitioner filed by him for approval of the lay out plan before the Collector, Mehsana. Under the order of March, 1992, the Collector, Mehsana gave the permission i.e. the lay out plan was approved. The respondent No.3 being aggrieved of the said order preferred a revision application under sec.211 of the Bombay Land Revenue Code, 1879 before the Government which came to be allowed under the order dated 20th February, 1993.

5. The counsel for the petitioner submitted that the impugned order has been passed by the respondent-Government as at that time in a civil suit filed by the respondent No.3 the order of status-quo was operative. That civil suit ultimately has been dismissed after passing of this order. The counsel for the respondent does not dispute this fact. However, he contended that, that was not the only ground given by the State Government to allow the revision application filed by the respondent No.3.

6. From the impugned order of the respondent-Government, I find that the order of District Collector, Mehsana passed in favour of the petitioner has been quashed and set aside by allowing the revision application partly and direction has been given that when the rights of the parties are adjudicated by the civil court, further steps will be taken in this subject. So from this operative part of the order, it is clear that the pendency of the civil suit was the main ground given for interference in the matter. Moreover, from the operative part of the order it comes that the matter has not been decided finally, but the matter had been kept in store till the rights of the parties are adjudicated by the civil court. That civil suit has now been dismissed. So otherwise also as per the operative part of the order of the Government, the matter has to be considered afresh.

7. Taking into consideration the aforesaid facts, the order of the respondent-Government dated 20th February, 1993 cannot be allowed to stand.

8. In the result, this special civil application succeeds and the same is allowed. The order of the respondent-Government dated 20th February, 1993, passed under sec.211 of the Bombay Land Revenue Code, 1879 in revision application of the respondent No.3 is quashed and set aside and the matter is sent back to the said authority to decide the revision application afresh after taking into consideration the subsequent event which has taken place i.e. the fact of the dismissal of the suit filed by the respondent No.3. The respondent-State is directed to decide the matter within a period of four months from the date of receipt of this order of this Court. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-